

# A Trial that Wasn't, an Impact that Was

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The coordinated campaign by the Polish ruling party, Law and Justice (PiS), and its proxies to curtail the free speech of Wojciech Sadurski has been previously reported on these pages (see [here](#), [here](#) and [here](#)), lastly in late November last year. Even if this is just a little over two months ago, an avalanche of new developments have occurred in Poland since, particularly following a judgment of the Court of Justice of late November (see analysis [here](#)) and the announcement by the Commission, on 14 January, that it had asked the Court of Justice to impose interim measures ordering the Polish government to suspend functioning of the Disciplinary Chamber of the Supreme Court. As recently as last week there was an open clash between the Supreme Court, the Constitutional Tribunal and the government occurred. Sadurski himself [wrote](#) an incisive comprehensive analysis of the overall situation. So did [Pech and Kelemen](#).

Away from these bigger picture analyses of the not-so-slowmotion implosion of the rule of law in what is and remains a very important EU Member State, the way in which the cases against Sadurski have developed can give further colouring to our understanding of the state of play in Poland. In many ways, the handling of the Sadurski cases offers a *pars pro toto* picture of the dynamics, twists and (sub)plots in a slide to authoritarianism under our very eyes. It speaks for many other similar cases that do not benefit from equally intense coverage. It shows that what is at play in these politically motivated trials is a mixture of obfuscation, an attempt at a long-game strategy facilitated by unlimited resources (paid by the Polish taxpayer) and an expectation that international (scholarly and other) attention spans will break – and support will dwindle accordingly.

At the hearing for the first trial against Sadurski the judgment was announced for 16 December. When that day came it was postponed due to the judge's illness. The ruling was later rescheduled four months into the future, to 23 March 2020. Given that this is a relatively straightforward case, and given that at first the period between hearing and ruling was announced to be some 3 weeks, this 14-weeks further delay seems oddly long. Paradoxical too, because PiS and proxies have often justified their ham-handed intervention into the judiciary on the argument that it is necessary to *speed up* things in that institution... In any event, the judgment is still in the pipeline.

On 28 January at 9am a second trial was scheduled. This time it was a civil defamation case brought by the PiS-controlled TVP. This TV station has an abrasive track-record of suing critics. Other prominent critics and human rights defenders have been targeted by it. Yet, Sadurski has the doubtful honour of being the only person sued on the same facts both with civil and criminal charges (the criminal case, i.e. the third case, is (still) scheduled for the near future, 4 February 2020). The judge assigned in this civil case, just like in the first one, was temporarily delegated to a higher-level court on the authority of the Minister of Justice. Even if assignment

of cases is supposedly done on a random/lottery-type basis, a newspaper search showed this judge remarkably often dealing with political cases. One must wonder: is this judge just a(n un)lucky winner of cases of political nature?

It became a trial that wasn't. Yet. Almost precisely 24 hours before the trial Sadurski's lawyer received a phone call from the court's registry. The trial had been postponed to an undetermined future date. After some insistence on knowing the reason(s), it was stated that this was – again – due to illness (or should I write 'ilness'?) of the judge. Quite understandably, Sadurski was left extremely frustrated. Having blocked a week in his agenda, rescheduled courses, flown transatlantic to appear where this was not legally obligatory, and having communicated all of these logistical elements to the court beforehand, he found himself footing a hefty emotional and financial bill before a trial had even occurred. Once again, one wonders in naïve disbelief: could inducing that feeling and inflicting these consequences have been the very point here?

There are, of course, various possible explanations for a judgment or a trial delayed. Judges are humans, and humans fall ill sometimes, perhaps especially in cold Polish winters. Two does not yet make a pattern. Just bad luck then that it happened twice in a row, in two different cases, a month apart? However, other theories were heard too. Cancelling a hearing on the shortest of notices that had been announced publicly by Sadurski, in a tweeted battle-cry to get supporters to come support, could very well also be a novel way to harass in what is – after all – a harassment campaign. Those missing the news about the cancellation and showing up in vain are unlikelier to reappear next time. Or perhaps the optics of a trial on a day that Commission Vice-President Jourová, responsible for the rule of law, came to visit Warsaw to continue 'dialogue' was found a little problematic by invisible behind-the-scenes forces based on calculations different from doing justice in this individual case? Or, yet another scenario tabled, did others get cold feet? Would judges assigned to political cases like this rather wait out what 'Luxembourg' will decide on the interim measures vis-à-vis the Supreme Court's Disciplinary Chamber? Take your pick. I would suggest that, at some point, the burden of proof for benefiting from the benefit of the doubt must reverse. I would suggest that that point has been reached. A while ago.

Did Sadurski admit defeat and keep quiet as a result? Well, no. He made an impact out of court, away from twitter, in a different way. An invited guest at a primetime talkshow of TVN24, an independent TV-station, he was asked to comment on the following segment of the speech given by Holocaust survivor Marian Turski at the Auschwitz 75<sup>th</sup> Liberation Anniversary Memorial Service (where Polish President Duda (and Hungarian Prime Minister Orbán) were sitting in the first row):

“.. Roman Kent, the president of the International Auschwitz Committee ... coined the Eleventh Commandment ... It runs thus: thou shalt not be indifferent.

.. Thou shalt not be indifferent in the face of lies about history.

Thou shalt not be indifferent when the past is distorted for today's political needs.

Thou shalt not be indifferent when any minority faces discrimination. Majority rule is the essence of democracy, but democracy also means that minority rights must be protected.

Thou shalt not be indifferent when any authority violates the existing social contract.

Be faithful to this Commandment. To the Eleventh Commandment: thou shalt not be indifferent.”

*(N.B. for an English translation of the full must-read Turski speech, see [here](#), courtesy of Stanley)*

This is how Sadurski reacted after he, together with the viewers, saw the relevant clip of the speech on-air (see the full clip of his intervention [here](#) (in Polish)):

“We cannot be indifferent to the fate of judges. The current authorities have condemned them to the position of slaves or feudal peasants, who are to follow orders from the authorities. What Law and Justice has created is a system in which every single judge, not only those appointed by the neo-National Council for the Judiciary, will be aware that they can be disciplined in case they rule in ways of which authorities disapprove. It means that all judges are under terrible pressure. But it also means that our rights to an impartial court are fundamentally infected. The rights of all of us: yours as well as mine. I have several cases against me in the Polish courts. How can I not be fully aware that the judges handling my cases are aware that this inquisitive disciplinary system was created and that it may hold them accountable for the content of their verdicts? Not for common criminal acts, like stealing drills or sausages, but for the content and justification of their ruling.”

It is yet to be seen whether judgment in Sadurski's first case will indeed be passed on 23 March. We will have to wait and see too for when the second case will be rescheduled. Away from crystal balls and invisible strings a reading of the tea leaves suggests that this may well depend on developments outside of Poland now. Because that is a very important take away of this tale: the EU *is* actually having an impact in how things are panning out, albeit in as yet unpredictable ways.

In the meantime, there is no choice but to buckle up and cling on for what will likely be a rollercoaster-ride ahead for Sadurski. It is essential to stay focused, report on every step, and keep up the pressure in exposing this for what it is and remains when we scrape it to its bare essentials: a coordinated harassment campaign aimed at a well-known intellectual with a tongue as sharp as his mind that is attacking the very heart of what the EU stands for. It is the truth to power in Sadurski's cases, and the countless lesser known ones pending alongside of his, that is vital for Poland and Europe at this junction. His choice of words in contributing to the public debate

in Poland is his alone. His fight to express them is very much mine too. That's why I stand, and will continue to stand, #WithWoj.

#Youtoo? Let him know below. Because, as his cases show, words matter.

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